

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
(Sprint Docket No. 2333)**

In re Application of:)
 David Welch)
Serial No.: 10/623,439)
Filed: July 17, 2003)
For: Method and System for Maintaining
 a Radio Link Connection During
 Absence of Real-Time Packet Data
 Communication)

Examiner: Marcus Smith
Group Art Unit: 2419
Confirmation No.: 3569

Mail Stop Patent Ext.
Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

**REQUEST FOR RECONSIDERATION
OF PATENT TERM ADJUSTMENT
UNDER 37 C.F.R. 1.705(b)-(d)**

Dear Sir:

Responsive to the Determination of Patent Term Adjustment mailed April 3, 2009,
Applicant submits this Request for Reconsideration of Patent Term Adjustment under 37 C.F.R.
1.705(b)-(d). As stated in 37 C.F.R. 1.705(b):

Any request for reconsideration of the patent term adjustment indicated in the notice of allowance, except as provided in paragraph (d) of this section, and any request for reinstatement of all or part of the term reduced pursuant to § 1.704(b) must be by way of an application for patent term adjustment. An application for patent term adjustment under this section must be filed no later than the payment of the issue fee but may not be filed earlier than the date of mailing of the notice of allowance.

The Notice of Allowance was mailed April 3, 2009, and Applicant has yet to pay the issue fee. Therefore, this request complies with the deadline specified in 37 C.F.R. 1.705(d), and Applicant submits that this request is timely.

The Determination of Patent Term Adjustment indicates that this matter has been granted an 906 day Patent Term Adjustment. Applicant submits that this adjustment is also erroneous.

Under *Wyeth v. Dudas*, No. 07-1492, slip op. (D.D.C. Sept. 30, 2008), Applicant submits that the Office erred in the determination of patent term adjustment by not including in the adjustment any "B" delay, which are the days delay resulting from an application pending longer than three years. According to 37 C.F.R. 1.703(b):

The period of adjustment under § 1.702(b) is the number of days, if any, in the period beginning on the day after the date that is three years after the date on which the application was filed under 35 U.S.C. 111(a) or the national stage commenced under 35 U.S.C. 371(b) or (f) in an international application and ending on the date a patent was issued...

The present application was filed on July 17, 2003, and the Notice of Allowance was mailed April 3, 2009, which is 3 years plus 991 days after the filing date, resulting in a "B" delay of at least 991 days.

The *Wyeth* decision states that "the 'A period' and 'B period' overlap only if they occur on the same calendar day or days" (*Wyeth*, No. 07-1492, slip op. at 8). Thus, according to the *Wyeth* decision, patentees are entitled to both the "A delay" and the "B delay" minus any overlap that occurs on the same calendar days. In this case, there is an overlap of 270 same calendar days between the "A delay" (namely, the delay to mailing of a first office action) and the "B delay" for the time period of July 17, 2006 (3 years from filing date) to April 13, 2007 (mailing of first office action). Thus, it seems that the total Patent Term Adjustment due to both the "A"

and "B" delays and minus the overlap (and minus Applicant's delay for taking an extension of time on February 4, 2008) is 1628 days (938 + 991 - 270 - 32 = 1628).

c. Conclusion

For these reasons, Applicant believes the patent term adjustment for this case should be 1628 days. Therefore, Applicant respectfully requests that the Office correct the patent term adjustment.

If a telephone conference would expedite the prosecution of this Request for Reconsideration of Patent Term Adjustment, please contact the undersigned attorney at (312) 913-2141.

Respectfully submitted,

**McDONNELL BOEHNEN
HULBERT & BERGHOFF LLP**

Dated: May 7, 2009

By: /Lawrence H. Aaronson/
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